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100TH CONGRESS  
1ST SESSION

# H. R. 818

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 29, 1987

Mrs. BENTLEY (for herself, Mr. HAMMERSCHMIDT, Mr. FISH, Mr. PARRIS, Mr. DENNY SMITH, and Mr. BOEHLERT) introduced the following bill; which was referred to the Committee on Post Office and Civil Service

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## A BILL

To amend title 5, United States Code, to establish an optional early retirement program for Federal Government employees, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Federal Employees' Op-  
5 tional Early Retirement Act of 1987".

6 **SEC. 2. PURPOSES.**

7 The purposes of this Act are—

8 (1) to reduce Federal Government civilian payrolls  
9 in an orderly and voluntary manner;

1           (2) to accommodate the personal plans of certain  
2       Federal Government employees who desire to retire  
3       but have not satisfied the applicable age and service  
4       requirements;

5           (3) to allow current Federal Government employ-  
6       ees to retire early in order to avoid possible adverse  
7       effects of Federal budgetary conditions; and

8           (4) to provide increased job protection and career  
9       opportunities for Federal Government employees, espe-  
10      cially women, members of minority groups, and young  
11      workers.

12   **SEC. 3. TEMPORARY VOLUNTARY EARLY RETIREMENT AU-**  
13                           **THORITY.**

14       Section 8336 of title 5, United States Code, is  
15   amended—

16           (1) by redesignating subsection (m) as subsection  
17       (n); and

18           (2) by inserting after subsection (1) the following  
19       new subsection (m):

20       “(m)(1) Except as provided in paragraph (2) of this sub-  
21   section, an employee who—

22           “(A) during the 90-day period beginning 60 days  
23       after the date of the enactment of the Federal Employ-  
24       ees’ Optional Early Retirement Act of 1987, is sepa-

1 rated from the service, except by removal for cause on  
2 charges of misconduct or delinquency—

3 “(i) after completing 25 years of service;

4 “(ii) after becoming 50 years of age and  
5 completing 20 years of service;

6 “(iii) after becoming 55 years of age and  
7 completing 15 years of service; or

8 “(iv) after becoming 57 years of age and  
9 completing 5 years of service; and

10 “(B) is not entitled to an annuity under section  
11 8337 of this title or subsection (a), (b), (d), (f), (h), or (j)  
12 of this section,

13 is entitled to an annuity.

14 “(2) Paragraph (1) of this subsection shall not apply to a  
15 bankruptcy judge, a judge of the United States Court of Mili-  
16 tary Appeals, or any law enforcement officer, firefighter, or  
17 air traffic controller who is not in a supervisory or adminis-  
18 trative position, as determined by the Director of the Office  
19 of Personnel Management.”.

20 **SEC. 4. COMPUTATION OF ANNUITY.**

21 The first sentence of section 8339(h) of title 5, United  
22 States Code, is amended by striking out “or (j)” and inserting  
23 in lieu thereof “, (j), or (m)”.

1 **SEC. 5. APPLICATION OF AMENDMENTS TO OTHER FEDERAL**  
2 **GOVERNMENT RETIREMENT SYSTEMS.**

3 The President shall extend the application of the  
4 amendments made by sections 3 and 4—

5 (1) to participants in the Central Intelligence  
6 Agency Retirement and Disability System and their  
7 survivors under section 292 of the Central Intelligence  
8 Agency Retirement Act of 1964 for Certain Employ-  
9 ees (50 U.S.C. 403 note);

10 (2) to participants in the Foreign Service Retire-  
11 ment and Disability System and their survivors under  
12 section 827 of the Foreign Service Act of 1980 (94  
13 Stat. 2124; 22 U.S.C. 4067); and

14 (3) if determined appropriate by the President, in  
15 like manner to employees of the Executive branch who  
16 are participants in any other Federal Government re-  
17 tirement system and their survivors.

18 **SEC. 6. EXEMPTION FOR ESSENTIAL OCCUPATIONAL CATEGO-**  
19 **RIES.**

20 (a) **IN GENERAL.**—An officer or employee in the Exec-  
21 utive branch retiring under section 8336(m) of title 5, United  
22 States Code (as added by section 3 of this Act), or pursuant  
23 to section 5 of this Act is not entitled to an annuity under or  
24 pursuant to such section if, immediately before the retire-  
25 ment, the officer or employee—

1 (1) is serving in a position in an exempt occupa-  
2 tional category,

3 (2) is working on an exempt project, or

4 (3) is serving in a position in an exempt location,  
5 designated under subsection (b).

6 (b) EXEMPTION AUTHORITY.—The President or his  
7 designee may, for the purposes of this section, designate—

8 (1) as an exempt occupational category any occu-  
9 pational category in an Executive agency that is essen-  
10 tial for the continuous performance of a critical mission  
11 of the Executive agency;

12 (2) as an exempt project any project carried out  
13 by an Executive agency that is an essential project in  
14 the interests of the Federal Government; and

15 (3) as an exempt location any location at which a  
16 responsibility of an Executive agency is carried out if,  
17 because of the undesirability of such location, it is diffi-  
18 cult to fill employee vacancies at the location by volun-  
19 tary transfers of other employees.

20 (c) LIMITATIONS ON AUTHORITY.—(1) A designation  
21 under subsection (b) shall be effective for the purposes of this  
22 section only if it is made in writing not later than the day  
23 before the optional early retirement period commences.

24 (2)(A) The authority provided in subsection (b) may not  
25 be exercised in a manner that precludes more than 25 per-

1 cent of the eligible officers and employees in an Executive  
2 agency from being entitled to an annuity under section  
3 8336(m) of title 5, United States Code, or pursuant to section  
4 5 of this Act.

5 (B) For the purpose of subparagraph (A), the term "eli-  
6 gible officers and employees" means the officers and employ-  
7 ees of the Federal Government who, without regard to sub-  
8 section (a), would be entitled, upon separation from Federal  
9 Government employment, to an annuity under section  
10 8336(m) of title 5, United States Code, or pursuant to section  
11 5 of this Act.

12 **SEC. 7. HOLDOVER OF ESSENTIAL EMPLOYEES.**

13 (a) **IN GENERAL.**—(1) An officer or employee in the  
14 Executive branch is not entitled to an annuity under section  
15 8336(m) of title 5, United States Code (as added by section  
16 3(2) of this Act), or pursuant to section 5 of this Act if, imme-  
17 diately before separating from Federal Government employ-  
18 ment, the officer or employee is serving as an essential em-  
19 ployee designated under subsection (b) of this section.

20 (2) An officer or employee of an Executive agency  
21 who—

22 (A) separates from Federal Government employ-  
23 ment immediately upon the termination of a designa-  
24 tion under subsection (b); and

1 (B) during the optional early retirement period,  
2 has given such Executive agency appropriate notice of  
3 his intention to separate from Federal Government em-  
4 ployment under section 8336(m) of title 5, United  
5 States Code, or pursuant to section 5 of this Act, as  
6 the case may be,  
7 shall be entitled to an annuity under or pursuant to such  
8 section notwithstanding that the separation becomes effective  
9 after the expiration of such period.

10 (b) **HOLDOVER AUTHORITY.**—The head of an Execu-  
11 tive agency may designate, for the purposes of this section,  
12 any officer or employee in such Executive agency as essential  
13 for (1) the continuous progress of a critical project under the  
14 responsibility of the Executive agency, or (2) the continuous  
15 performance of a critical responsibility assigned to such offi-  
16 cer or employee by the Executive agency.

17 (c) **LIMITATION ON AUTHORITY.**—A designation under  
18 subsection (b) may not be effective for more than 6 months.

19 **SEC. 8. LIMITATION ON REPLACEMENT OF RETIREES.**

20 (a) **IN GENERAL.**—Notwithstanding any other provision  
21 of law, except as provided in subsection (b), (c), (d), (e), or (f),  
22 an appointment may not be made to a position of civilian  
23 employment in the Executive branch on any day during the  
24 hiring limitation period, unless the full-time employee equiva-  
25 lent of the total number of civilian employees in the Execu-

1 tive branch (other than the United States Postal Service and  
2 the Postal Rate Commission) after such appointment on such  
3 day does not exceed the maximum authorized full-time em-  
4 ployee equivalent number determined for such day, as pro-  
5 vided in subsection (h)(2).

6 (b) WAIVER.—(1) The President or his designate may  
7 waive the application of subsection (a) in the case of a posi-  
8 tion or a category of positions in the Executive branch if the  
9 President (or his designee) determines that—

10 (A) the position or positions are essential for the  
11 performance of an Executive responsibility; or

12 (B) the estimated aggregate cost of such position  
13 or positions during the hiring limitation period does not  
14 exceed the estimated aggregate amount of user fees  
15 that will be collected by the Federal Government for  
16 services performed under a Federal Government pro-  
17 gram or programs during such period by an employee  
18 in such position or employees in such positions.

19 (2) The President (or his designee) may not exercise the  
20 waiver authority provided in paragraph (1) in a manner that  
21 results in increased pay and other personnel costs in any Ex-  
22 ecutive agency that exceed the amount of the cost savings  
23 which result from the implementation of this Act and the  
24 amendments made by this Act in the case of such Executive  
25 agency.



1 (c) INAPPLICABILITY OF LIMITATION TO THE POSTAL  
2 SERVICE AND THE POSTAL RATE COMMISSION.—Subsec-  
3 tion (a) does not apply to positions in the United States  
4 Postal Service or under the Postal Rate Commission.

5 (d) INAPPLICABILITY OF LIMITATION TO CERTAIN  
6 REINSTATEMENTS.—Subsection (a) does not apply to the  
7 case of an individual who is reinstated to a position of em-  
8 ployment the individual formerly held in the Executive  
9 branch by order of a court of the United States having juris-  
10 diction to issue such order or by reason of an action of the  
11 Merit Systems Protection Board or the Special Counsel of  
12 the Merit Systems Protection Board authorized by law.

13 (e) INAPPLICABILITY OF LIMITATION TO CERTAIN  
14 TRANSFER.—Subsection (a) does not prohibit the transfer of  
15 employees in the Executive branch for the purpose of filling a  
16 vacancy in an Executive branch position.

17 (f) INAPPLICABILITY OF LIMITATION DURING A  
18 PERIOD OF WAR OR NATIONAL EMERGENCY.—Subsection  
19 (a) shall not apply during a period of war declared by the  
20 Congress or a period of national emergency declared by the  
21 Congress or the President.

22 (g) LIMITATION ON PROCUREMENT OF PERSONAL  
23 SERVICES.—The President shall take appropriate action to  
24 ensure that there is no increase in the procurement of per-  
25 sonal services by contract by reason of the enactment of this

1 section except in cases in which it is to the financial advan-  
2 tage of the Federal Government to increase the procurement  
3 of such services.

4 (h) DEFINITIONS.—For the purposes of this section—

5 (1) the term “employee” has the same meaning as  
6 provided in section 2105 of title 5, United States  
7 Code;

8 (2) the term “maximum authorized full-time em-  
9 ployee equivalent number” means the excess of—

10 (A) the full-time employee equivalent number  
11 that describes the total number of civilian employ-  
12 ees employed in positions in the Executive branch  
13 (other than the United States Postal Service and  
14 the Postal Rate Commission) on the day before  
15 the optional early retirement period commences,  
16 over

17 (B) the full-time employee equivalent number  
18 that describes the total number of—

19 (i) such employees who, on or before  
20 the day for which the maximum authorized  
21 number is computed, have retired during  
22 such period entitled to an annuity under sub-  
23 chapter III of chapter 83 of title 5, United  
24 States Code, or any other Federal Govern-

1                   ment retirement system for officers and em-  
2                   ployees of the Federal Government; and

3                   (ii) such employees who, on or before  
4                   such day, have retired after such period enti-  
5                   tled to such an annuity as provided in section  
6                   7(a)(2) of this Act; and

7                   (3) the term "hiring limitation period" means the  
8                   period beginning on the date 60 days after the date of  
9                   the enactment of this Act and ending at the end of the  
10                  third fiscal year which begins on or after the first day  
11                  of such period.

12   **SEC. 9. REGULATIONS.**

13                  The President or his designee may prescribe regulations  
14   to carry out sections 6, 7, and 8.

15   **SEC. 10. LIMITATION ON USE OF SAVINGS.**

16                  (a) **IN GENERAL.**—(1) None of the budget authority and  
17   outlays saved in any fiscal year by reason of the reduced pay  
18   and other personnel costs resulting from the implementation  
19   of this Act and the amendments made by this Act may be  
20   obligated or expended for any purpose.

21                  (2) The total amount of budget authority and outlays  
22   saved in any fiscal year (as described in paragraph (1)) shall  
23   be credited against any amount of pay and other personnel  
24   costs required to be sequestered in such fiscal year under the

1 Balanced Budget and Emergency Deficit Control Act of  
2 1985 (Public Law 99-177).

3 (b) AUDITS.—The Comptroller General of the United  
4 States may audit the records of any agency of the Federal  
5 Government to determine the level of compliance with the  
6 requirements of subsection (a).

7 (c) NOTICE OF NONCOMPLIANCE.—The Comptroller  
8 General of the United States shall notify Congress, in writ-  
9 ing, of each noncompliance with the requirements of  
10 subsection (a).

11 **SEC. 11. PROGRAM REPORT.**

12 (a) IN GENERAL.—Not later than one year after the  
13 first day of the optional early retirement period, the Director  
14 of the Office of Personnel Management shall transmit to Con-  
15 gress a report containing an evaluation of the optional early  
16 retirement program and the limitation on replacement of re-  
17 tirees provided in this Act.

18 (b) CONTENTS OF REPORT.—The report under subsec-  
19 tion (a) shall include the following matters:

20 (1) The number of employees who have retired  
21 under the optional early retirement program, stated by  
22 employing agency, by age group of the retirees, and by  
23 grade or other position classification of the retirees.

24 (2) The number of description of the exempt occu-  
25 pational categories, projects, and locations designated

1 under section 6(b) and the reasons such categories,  
2 projects, and locations have been so designated.

3 (3) The number of employees who have been des-  
4 ignated as essential employees under section 7(b) and  
5 the reasons such employees have been so designated.

6 (4) The number of employees appointed under the  
7 waiver authority provided in section 8(b) (stated as a  
8 full-time employee equivalent number) and the reasons  
9 for the appointments.

10 (5) The amount of the savings in pay and other  
11 personnel costs that have resulted, before the date of  
12 the report, from the implementation of this Act and the  
13 amendments made by this Act.

14 (c) ADMINISTRATIVE PROVISION.—The Director of the  
15 Office of Personnel Management may obtain from any agency  
16 of the Federal Government such information as the Director  
17 determines necessary to prepare the report required by sub-  
18 section (a).

19 **SEC. 12. DEFINITIONS.**

20 For purposes of this Act—

21 (1) the term “Executive agency” has the same  
22 meaning as provided in section 105 of title 5, United  
23 States Code, and includes the military departments  
24 specified in section 102 of such title, but does not  
25 include—

1 (A) the United States Postal Service; and

2 (B) the Postal Rate Commission; and

3 (2) the term "optional early retirement period"

4 means the 90-day period provided in section 8336(m)

5 of title 5, United States Code, or pursuant to section 5

6 of this Act.

7 SEC. 13. REVISIONS IN BUDGET ALLOCATIONS AND AGGRE-

8 GATES.

9 (a) REPORTS BY COMMITTEES ON THE BUDGET.—

10 Upon the enactment of this Act, the Committees on the

11 Budget of the Senate and the House of Representatives shall

12 report to their respective Houses revised allocations, pursu-

13 ant to section 302(a) of the Congressional Budget Act of

14 1974, and revised budget aggregates to carry out this Act

15 and the amendments made by this Act.

16 (b) REPORTS BY OTHER COMMITTEES OF CON-

17 GRESS.—Upon the reporting of revised allocations under sub-

18 section (a), the appropriate committees of the Senate and the

19 House of Representatives shall report revised allocations,

20 pursuant to section 302(b) of the Congressional Budget Act

21 of 1974, to carry out this Act and the amendments made by

22 the Act.

23 (c) TREATMENT OF REPORTED REVISIONS.—Revised

24 allocations and budget aggregates reported under this section

25 shall be considered for the purposes of the Congressional

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1 Budget Act of 1974 as aggregates contained in and alloca-  
2 tions pursuant to S. Con. Res. 120 (99th Congress, Second  
3 Session), the concurrent resolution on the budget for fiscal  
4 year 1987.

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